

FILED

STATEMENT OF THE CASE

JUN 24 2008

PRELIMINARY INJUNCTION RECONSIDERATION  
ORDER (DOC # 22) ATTACHED

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HON: CHARLES R. BREYER >

SIR, THIS MOTION IN QUESTION BEFORE YOU TODAY,  
IS BEING PRESENTED IN GOOD FAITH. WHEREAS, I'M  
BEING PHYSICALLY AND MENTALLY PUNISHED FOR NOTHING?

(IF) THE DEFENDANT(S) SHOULD HAVE A COPY OF  
THIS MOTION (SIR) I WILL BE HAPPY TO PAY  
THE COST WITH YOUR (CLERK)?

"REASON"

CORCORAN STATE PRISON 3A03 AD-SEC, ONE OF  
THE OFFICERS WHO (WORK) HERE IN AD-SEC UNDER L.T. A.  
DIAZ, INMATES (HAS) TO GIVE HIM YOUR LEGAL WORK,  
AND (HE) TAKES IT TO THE LAW LIBRARY FOR (COPIES)  
HIMSELF? (ALL) OFFICIALS GET TO REVIEW IT  
BEFORE IT LEAVES THE BLACK?

THANK YOU VERY MUCH  
SIR

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

1 MICHAEL LYNN WATERS  
2 PLAINTIFF,

3 v.  
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5 A.W. COOK, et al.,  
6 DEFENDANT(S),  
7  
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9 NO: C 07-4683 CRB (PR)  
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11 ORDER (DOC # 22)  
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13 HON. CHARLES R. BREYER  
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REQUEST FOR EMERGENCY  
RECONSIDERATION FOR A  
PRELIMINARY INJUNCTION,  
WHEREAS THE FALSIFIED  
128-G OF 4/23/08 TO  
TRANSFER PLAINTIFF HAS CLEARLY  
RESULTED IN CONDITIONS  
THAT (ARE) A SIGNIFICANT OR  
ATYPICAL DEPARTURE FROM THE  
ORDINARY INSTANCES OF PRISON  
LIFE, AND PRODUCTION OF  
SAID DOCUMENTS BEFORE RULING.

PLAINTIFF, MICHAEL LYNN WATERS, IN PRO SE, NOW PRESENTS  
UNDISPUTED EVIDENCE OF THE 8TH AMENDMENT VIOLATION THAT  
CAN'T BE OVERCOME BY "NO" OTHER EVIDENCE, WHICH SET FORTH  
FACTS SHOWING BOTH A COMBINATION OF PROBABLE SUCCESS ON THE  
MERITS AND THE POSSIBILITY OF IRREPARABLE INJURY, AND SERIOUS  
QUESTIONS ARE INFACt RAISED AND THE BALANCE OF HARSHIPS  
HAS TIPS SHARPLY IN PLAINTIFF'S FAVOR HERE AT CORCORAN  
STATE PRISON.

1 PLEASE ACKNOWLEDGE THE SAID PRODUCTION OF REQUESTED  
2 DOCUMENTS, REPORTS AND PICTURES ARE NOW - APART OF THIS  
3 ORDER FROM THE UNITED STATES DISTRICT COURT JUDGE:

ORDER

6 THIS ORDER FROM THE COURT SHALL BE PAID FOR BY THE  
7 DEFENDANT'S OR PLAINTIFF, UPON THE CONCLUSION OF THIS  
8 EMERGENCY INVESTIGATION. DUE TO THE TRANSFER OF PLAINTIFF  
9 TO CORCORAN'S STATE PRISON GENERAL POPULATION.  
10

11 (ALL) QUESTIONS, DOCUMENTS, REPORTS, PICTURES, WRITTEN, TYPED  
12 OR OTHERWISE - ARE PLACED) UNDER THE PENALTY OF PERJURY,  
13 DATH AND) FALSIFIED) DOCUMENTS, (IF) PRESENTED) BEFORE ME,  
14 SHALL, MUST, WILL, BE PUNISHED FOR THE CRIME IN WHICH IT  
15 CARRIES.

16 AN INQUIRY INTO CONDITIONS OF CONFINEMENT BY NECESSITY REQUIRES  
17 ON THE PARTICULAR FACTS OF EACH SITUATION, THE "CIRCUMSTANCES,  
18 NATURE, AND DURATION" OF THE CHALLENGED CONDITIONS MUST  
19 BE CAREFULLY CONSIDERED. SEE: (JOHNSON V. LEWIS, 214 F.3D. 726,  
20 731 (9TH CIR. 2000). WHILE NO SINGLE FACTOR CONTROLS THE OUTCOME  
21 OF THESE CASES, THE LENGTH OF EXPOSURE TO THE CONDITIONS IS  
22 OFTEN OF PRIME IMPORTANCE.) <

23 WHILE "SUBSTANTIAL DEPRIVATIONS OF SHELTER, FOOD, DRINKING  
24 WATER, AND SANITATION" MAY MEET THE STANDARD DESPITE  
25 A SHORTER DURATION. (JOHNSON V. LEWIS, 214 F.3d. AT 732.) SEE-  
26 ALSO. (WHITNACK V. DOUGLAS COUNTY, 16 F.3d. 954, 958 (8TH CIR. 1994).  
27 (THE LENGTH OF TIME REQUIRED) BEFORE A CONSTITUTIONAL VIOLATION  
28 IS MADE OUT DECREASES AS THE LEVEL OF FILTHINESS ENDURED) —

1 INCREASES:

2 EVIDENCE TO BE PRODUCED AND PROVIDED  
3 BY WARDEN DERRAL ADAMS,

4 1) MEDICAL RECORDS (COPY) FROM (4/16/08 - 6/11/08)

5 EVIDENCE OF THE (GRANULOMA) LEFT ON PLAINTIFF, MICHAEL  
6 LYNN WATERS, RIGHT LITTLE FINGER FROM: 4/18/08 - 6/11/08?

7  
8 2) A (PICTURE) OF THE ACTUAL (GRANULOMA) HE'D IN THE  
9 (A.C.H.) LAB AT CORCORAN STATE PRISON. (OPERATION) DONE ON  
10 (6/11/08) AS PLAINTIFF REQUESTED THE (A.C.H.) LAB TO HOLD  
11 FOR THE COURTS;

12  
13 3) THE DOCUMENTS AND REPORTS AS TO PLAINTIFF NOT BEING  
14 ABLE TO RECEIVE HIS PROPERTY-LEGAL MATERIALS, FROM (5/16/08 -  
15 6/19/08)

16  
17 4) THE DOCUMENTS AND REPORTS OF PLAINTIFF'S, TOOTHBRUSH,  
18 TOOTHPICKER, MATTRESS, SHEETS, PILLOW, SOCKS, T-SHIRTS, AND  
19 CLEANING PRODUCTS WAS TAKEN FOR (NOT) DOUBLE CELLING IN 3A03  
20 AD-SEG? FROM (5/21/08 - 6/19/08 AND) COUNTING. (SPoon + CUP)?

21  
22 5) THE DOCUMENTS AND REPORTS OF (WHY-NOT) CLEANING PRODUCTS  
23 BEING PASSED OUT (ONCE) A WEEK IN 3A03 AD-SEG, BUT ONLY  
24 GIVEN (ONCE) ON ARRIVAL AND NOTHING MORE?

25 (A.C.H.). MENTAL HEALTH REPORT/CHART OF (5/2/08 - 5/16/08)

26 6) THE DOCUMENTS AND REPORTS OF PLAINTIFF BEING PLACED IN  
27 A.C.H. ON ARRIVAL TO CORCORAN PRISON R+R WHEREAS, OFFICER  
28 CARTEZ, FEMALE, REVIEWED PLAINTIFF'S C-FILE AND THEN CLEARLY STATED:

1 OUT LOUD WHILE ESCORTING PLAINTIFF TO SEE THE R.N.'S  
2 PASS THE SAME BULL PEN OFFICER CORTEZ WANTS PLAINTIFF  
3 TO ENTER.

4 I READ YOUR C-FILE! YOU LIKE TO BE IN CUFFS (WATERS)!  
5 YOU NEED TO STOP TELLING ON PEOPLE! DON'T (P.C.) UP DOWN  
6 HERE! WAIT UNTIL YOU GET TO WHERE YOU'RE GOING TO (P.C.)  
7 UP? DON'T DO IT DOWN HERE!

8

9 7) A WRITTEN OR TYPED STATEMENTS FROM THE (2) R.N.'S  
10 LISTED WHO WAS PROVIDING THE MEDICAL ATTENTION IN HIS  
11 RECORDS ON (5/2/08) IN RTR WHILE PLAINTIFF AND C/O CORTEZ  
12 WAS HAVING THE HEATED ARGUMENT BEFORE EVERYONE, PRISONS  
13 AND OFFICIALS?

14

15 8) DOCUMENTS AND REPORTS (WHY) ANY AND ALL (SPOONS/CUPS)  
16 THAT ARE LEFT BY OTHER INMATE IN THE AD-SEC CELLS  
17 AFTER BEING RELEASED, ARE (NOT) SENT TO THE (3A) KITCHEN  
18 AND PLACED IN THE (WISHER)?

19 BUT, THROWN IN A (MILK CREAT) IN AD-SEC AND PLACED IN  
20 A NEW ARRIVAL (FISH KIT) WITHOUT INFORMING INMATES?

21

22 9) ANY AND ALL DOCUMENTS/REPORTS "GIVING 3AO3 AD-SEC,  
23 OFFICIALS (AUTHORITIES) FROM THE (HEALTH) INSPECTORS (IA)  
24 PLACED USED SPOONS/CUPS IN A MILK CREAT FOR REUSE?

25

26 10) ANY AND ALL DOCUMENTS / REPORTS ON, TYPED, WRITTEN, RECORDED  
27 MISCONDUCT BY (L.T. A. NAY) OF 3AO3- AD- SEC, INCLUDING  
28 THE USE OF (2) CAN'S OF PEPPER STRAY ON THE BACK INMATE-

1 WHO IS (NAM) ON (5/19/08) HAUSED IN (3A03-123 AD-SEG) <sup>low</sup>

2  
3 II) THE DOCUMENTS/REPORTS OF THE R.N.'S HELPING THE OTHER  
4 INMATES WHO CAME IN CONTACT WITH THIS (PEPPER STRAY)  
5 AS (PLAINTIFF) MICHAEL WATERS REQUESTED:

6 THAT THE VENTS BE CUT OFF?

7 NO OXYGEN WAS GIVEN AND REFUSED?

8 CAN THE OFFICIALS PROVIDE ANY EVIDENCE THAT (PLAINTIFF)  
9 (F(DI)N'T) SUFFER "BURNING SKIN," AND LUNGS WITH "CONGESTED"  
10 BREATHING AND TEARING EYES: FOR (30) MINUTES AT MOST?

11  
12 WAS THIS USE OF FORCE UNJUSTIFIED, WHEREAS THE SAID  
13 INMATE WAS IN A SUICIDE CELL IN 3A03 AD-SEG, WAS CLEARLY  
14 ORDERED TO SIT ON HIS BED, WHEN HE COMPLAINED, (L.T. A. DIAZ.)  
15 TOOK OUT HIS PEPPER STRAY AND STRAYED THIS INMATE, AND  
16 THEN, RECEIVED ANOTHER CAN OF PEPPER STRAY FROM ANOTHER  
17 OFFICER, WHO PLAINTIFF STATES WAS (OFFICER L. ECHEVERRIA)  
18 ALSO, OF 3A03 AD-SEG 2<sup>ND</sup> WATCH,

19 WHILE (L.T. A. DIAZ.) WAS LOUDLY STATING: DON'T HANG YOURSELF  
20 INMATE! DON'T HANG YOURSELF! CONTINUE TO SPRAY A  
21 EMPTIED THE (SECOND CAN), BECAUSE OF TALKING LOUD TO HIMSELF?  
22 WHILE (MENTAL HEALTH - DOCTOR ROTH) WAS SEEN BY PLAINTIFF  
23 (LAUGHING) WITH SOME OTHER OFFICERS WHILE L.T. A. DIAZ.  
24 WAS SPRAYING THIS INMATE?

25  
26 THIS VERY SAME ACTION WITH PEPPER SPRAY  
27 TOOK PLACE IN: SEE (DESPAIN V. UPHOFF, 264 F.3d 965,  
28 (C.A. 10 (Wyo.) 2001). (WITH LESS UNJUSTIFIED PEPPER SPRAY)

THIS COURT WILL SET THIS ORDER IN ACTION: WHEREAS,

1 PLAINTIFF NOW STATES:

2 I MICHAEL LYNN WATERS, HEREBY CERTIFY, THAT THE FOLLOWING  
3 ABOVE AND BELOW IS TRUE AND CORRECT:

4 I FURTHER STATE THAT (IF) THIS COURT IS WILLING AND ANY  
5 OF THE OFFICIALS OR STAFF LISTED HERE (STATE) TO THIS  
6 COURT THAT: (THEY DIDN'T) DO ANYTHING LISTED HERE:

7 PLAINTIFF REQUEST (A) LIE-DETECTOR TEST  
8 PAID FOR BY (HIMSELF). IF PLAINTIFF PAST,

9 ALL DEFENDANT'S WHO TOOK PART TO TRANSFER  
10 PLAINTIFF AND HERE, PAY (ALL) COST AND BE (FIRE)  
11 FROM (EVER) WORKING FOR CDC/ POLICE ENFORCEMENT  
12 AGAIN.

13 PLAINTIFF IS DEAL WITH THIS PSYCHOLOGICAL WAR GAME  
14 HERE> AND REQUEST A (PICTURE) OF PLAINTIFF'S CELL AND  
15 RIGHT HAND WHERE (GRANT) (OMA) WAS REMOVED:

16  
17 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING  
18 IS TRUE AND CORRECT.

19 6/19/08  
20 DATED:

Michael Lynn Waters  
21 SIGNATURE

22 IT IS SO ORDERED

23  
24  
25 DATED

26 CHARLES R. BREYER  
27 UNITED STATES DISTRICT  
28 COURT JUDGE

PRISON OFFICIALS VIOLATE THE EIGHTH AMENDMENT WHEN THEY ACT WITH DELIBERATE INDIFFERENCE TO A PRISON CONDITION THAT EXPOSES A PRISONER TO AN UNREASONABLE RISK OF SERIOUS HARM. (HELLING V. MCKINNEY, 509 U.S. 25, 33 (1993). PRISON OFFICIALS ACT WITH DELIBERATE INDIFFERENCE WHEN THEY IGNORE AN OBVIOUS AND SERIOUS DANGER, FARMER V. BRENNAN, 511 U.S. 825, 835 (1994).

YOU SHOULD NOT BE SUBJECTED TO EXTREME HOT OR COLD, AND SHOULD BE GIVEN BEDDING AND CLOTHING APPROPRIATE FOR THE TEMPERATURE. GASTON V. COUGHLIN, 249 F.3d. 156 (2d Cir. 2001).

SANITATION AND PERSONAL HYGIENE, PRISONERS ARE ENTITLED TO SANITARY TOILET FACILITIES, DESPAIN V. UPHOFF, 264 F.3d. 925 (10<sup>th</sup> Cir., 2001) PROPER TRASH PROCEDURES, AND BASIC SUPPLIES SUCH AS TOOTHBRUSHES, TOOTHPASTE, SOAP, SANITARY NAPKINS, RAZORS, AND CLEANING PRODUCTS.

### THE BIG QUESTIONS

SHOULD PLAINTIFF BE PUNISHED BY TAKING ALL OF THIS AWAY FROM HIM, INCLUDING HIS MATTRESS, LEGAL WORK, CIVIL ACTION EVIDENCE BECAUSE OF HIM NOT DOUBLE CELLING?

DOES PLAINTIFF HAVE A RIGHT TO PRESENT HIS MENTAL HEALTH EVIDENCE PROVIDED BY THE ATTORNEY GENERAL'S OFFICE THAT HE WAS GRANTED A SINGLE CELL STATUS?

ALSO, 3161: TITLE 15> INMATE-OWNED LEGAL MATERIALS, TITLE 15, SECTION 3160> INMATES ACCESS TO COURTS (a) STAFF SHALL NOT IN ANY WAY RETALIATE AGAINST OR DISCIPLINE ANY INMATE FOR INITIATING OR MAINTAINING A LAWSUIT.

PLAINTIFF, WILL NOT BE RESPONSIBLE FOR HIS OWN HARM OR DEATH, SHOULD HE?

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RESPECTfully SUBMITTED)

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MICHAEL LYNN WATERS

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare the following:

I am over 18 years of age, and a party to the within action.

My address is:

CORCORAN STATE PRISON  
P.O. BOX 3461  
CORCORAN, CA 93212

On 6/20/2008, I served a copy of the attached  
PRELIMINARY INJUNCTION

On the below-named persons by placing a true copy thereof in envelope addressed as follows, with first class postage thereon fully prepaid, and delivering the sealed envelopes, according to the procedures prescribed for sending legal mail, to the proper institutional official for deposit in the United States mail at Corcoran, in the County of Kings, California.

CLERK OF COURT  
U.S. DISTRICT COURTHOUSE  
NORTHERN DISTRICT COURT  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CA 94102

Executed under penalty of perjury this \_\_\_\_\_ day of  
6/20/08, 200\_\_\_\_\_, at Corcoran, California.

michael jerry walter  
DECLARANT

(8 of 8)

MCORRAN STATE PRISON  
P.O. BOX 3461  
MCORRAN, CALIFORNIA  
93212

TO: CLERK OF COURT  
MUR. CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA  
94102

**JAIL MAIL**